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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Application by Ameritech Michigan Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Michigan

CC Docket No. 97-137

REPLY BRIEF IN SUPPORT OF APPLICATION BY AMERITECH MICHIGAN FOR PROVISION OF IN-REGION, INTERLATA SERVICES IN MICHIGAN

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EXECUTIVE SUMMARY

The 1996 Telecommunications Act was driven by a single objective — to increase competition in all telecommunications markets. Under the open market framework established by Congress, once a BOC opens the local exchange market to competition, it is entitled to enter long distance. Ameritech's Application should be granted — and Congress' intent realized — because the local exchange market in Michigan is now open to competition.

Ameritech has fulfilled all of the market-opening obligations prescribed by Congress. Ameritech has fully implemented the competitive checklist. All checklist items are currently available to all competitors — at the cost-based rates required by the Act. All checklist items that have been ordered by competing carriers are being furnished to those carriers pursuant to interconnection agreements that have been scrutinized and approved by the Michigan Public Service Commission ("MPSC"). In addition, those approved interconnection agreements subject Ameritech to exacting performance measures, standards and reporting obligations that ensure that Ameritech will continue to perform its market-opening obligations — including the provision of non-discriminatory access to all checklist items — after Ameritech has begun to compete in the highly concentrated long distance market.

Ameritech has also fully implemented the structural and accounting safeguards required by Section 272 and the Commission's implementing regulations, and will continue to comply with those requirements after its entry into long distance. And all of Ameritech's market-opening obligations are subject to scrutiny, oversight and enforcement by other telecommunications carriers (including such giants as AT&T and MCI), the MPSC, the DOJ and this Commission. Finally, Ameritech's entry into long distance will benefit all consumers of telecommunications services, but "especially . . . residential and low-volume business customers." DOJ SBC Evaluation, Schwartz Aff., ¶¶ 61, 86, 96.

It should come as no surprise that the most vigorous objectors to Ameritech's Application are firms (or organizations controlled or financed by firms) that have never accepted the notion that all telecommunications markets should be open to unrestricted competitive entry. These firms will — indiscriminately — oppose every BOC Section 271 application. They will always contend that BOC entry into long distance is premature. They have never seen — and never will see — a procompetitive move into their markets that is not fraught with problems. In short, these firms are driven by a single, impermissible goal — the permanent frustration of the "open markets" objective of the Telecommunications Act of 1996.

In pursuit of this strategy, Ameritech's opponents make two moves. First, they ask the Commission to turn back the clock and resurrect the "metric" test for BOC entry that Congress rejected. To be sure, Ameritech's opponents assiduously avoid characterizing their position as a "metric" test. But the standards they do advocate (e.g., "substantial competition" or "actual, effective local competition") would erect the very entry barrier that Congress repudiated — namely, requiring a substantial amount of competition in the local market before the BOCs may enter long distance. What Congress set as the standard for long distance entry was not any level of competition, but proof that the local exchange market was open to competition, and that is precisely what Ameritech has shown.

The second move by Ameritech's opponents was equally predictable — using the time-honored "mud at the wall" gambit to deflect the Commission's attention from the fundamental question of whether the Michigan local exchange is now open to competitive entry. Nothing is too trivial, too unsubstantiated, or too irrelevant for this effort — which threatens to turn a proceeding intended to implement a national pro-competitive policy into an open forum for airing disputes (real or imagined) relating to a host of microscopic issues of the kind that inevitably arise during day-to-day contacts between aggressive competitive businesses. The Commission

should see this move for what it is — an absurd attempt by firms that have entered and are competing in the Michigan market to suggest that the Michigan market is not open to competitive entry. This Commission simply cannot take seriously assertions about barriers to entry from competitors that have successfully entered the local market and that have touted that success, without qualification, to the public and their own investors. Such assertions are belied — graphically and dramatically — by what is actually happening in Michigan.

In contrast, the MPSC and the Department of Justice ("DOJ") support Ameritech's position on most of the issues that are critical to the Commission's Section 271 determination. Both agree that Ameritech faces the facilities-based competition required by Section 271(c)(1)(A). Both agree that Ameritech satisfies the requirement that it provide each of the checklist items to competing carriers by furnishing that item to carriers that have actually ordered it or by making it available, through an approved interconnection agreement, to carriers that may elect to order it in the future. Neither disputes Ameritech's position that the public interest standard for BOC entry into long distance is whether the market is "open to competition" — not, as Ameritech's competitors contend, whether there is sufficient "actual and demonstrable" or "effective" competition throughout the state of Michigan. Finally, both conclude that Ameritech is providing and has fully implemented the overwhelming majority of the checklist items.

Both the MPSC and the DOJ, however, stop short of a complete endorsement of Ameritech's application. The MPSC determined that Ameritech unconditionally satisfied 11 of the 14 checklist items, and expressed confidence that Ameritech could satisfy the remaining items by the time of the Commission's decision on Ameritech's application. The DOJ expressed discrete and, in the final analysis, extremely limited concerns relating to (1) Ameritech's compliance with certain checklist items (including OSS, interconnection trunking, and unbundled

local switching and local transport) and (2) the sufficiency of the performance measures and reporting requirements contained in the interconnection agreements that were approved by the MPSC. However, as demonstrated in this Reply Brief (and in the affidavits submitted in support thereof), the DOJ's "concerns" either are based on a misapprehension or misunderstanding of the record facts or do not support the conclusion that Ameritech has fallen short of full compliance with the requirements of Section 271.

More fundamentally, the DOJ's concerns — which, for the most part, are inconsistent with the factual findings of the MPSC — simply cannot support its ultimate opinion that the Michigan local exchange is not yet open to competition. Ameritech has taken all of the steps that Congress and this Commission have concluded are sufficient to give other carriers an opportunity to compete in local exchange services in Michigan. And competing carriers — including such telecommunications giants as AT&T and MCI — have taken advantage of that opportunity. Under these circumstances, the fundamental objectives of the Telecommunications Act can be achieved only by affording Ameritech an equal opportunity to compete in all telecommunications markets.

* * *

With the passage of the Telecommunications Act in February 1996, Congress established a framework for expeditiously expanding competition in all telecommunications markets. In assessing Ameritech's Application, the Commission should take a hard look at whether developments during the one and a half years since passage of the Act have met Congress' expectations. There have been mega-mergers, but more competition was the fundamental goal of the Act. Of course, there has been progress in one area: local exchange markets in some states, like Michigan, have been opened to competition. But there has been no progress in achieving the other primary objective of the 1996 Act — to "increase[ ] competition" in "long

distance services" (Local Competition First Report and Order, ¶ 3) so that competition in all telecommunications markets will flourish. Ameritech's Application to enter long distance in Michigan presents the Commission with an opportunity to take a major step toward that goal. And the Commission should not let that opportunity — and the promise of the Act itself — founder on the calculated and predictable objections of those who do not want more competition in all telecommunications markets.

TABLE OF CONTENTS

Before the
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Ameritech Michigan respectfully submits this Reply Brief in support of its Application to provide in-region, interLATA services in Michigan.

I. AMERITECH IS PROVIDING ACCESS AND INTERCONNECTION TO COMPETING PREDOMINANTLY FACILITIES-BASED PROVIDERS OF TELEPHONE EXCHANGE SERVICES TO RESIDENTIAL AND BUSINESS CUSTOMERS.

In its opening Brief (pp. 8-14), Ameritech Michigan demonstrated that Brooks Fiber, MFS, and TCG meet the Track A requirements under Section 271(c)(1)(A). The DOJ and the MPSC agree that Ameritech faces competition from Track A carriers.[1/] Nothing the commenters say in response warrants a contrary conclusion.

1. Although it is undisputed that Brooks Fiber satisfies the "residential and business" prong of Section 271(c)(1)(A), some commenters maintain that TCG and MFS do not because neither currently serves residential customers. E.g., MFS, p. 5; ALTS Mot., pp. 22-23. That the DOJ (pp. 5-6) takes this position here is a surprise. In its comments on SBC's Oklahoma

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1/ MPSC, pp. 10-11 (finding that Brooks, MFS and TCG are predominantly facilities-based); DOJ, pp. 6-7 (finding that Brooks meets the requirement, and not TCG or MFS).

application, the DOJ correctly concluded that "Track A . . . does not require each separate facilities-based competitor to be providing both residential and business service as long as both residential and business subscribers are being served by some facilities-based provider."[2/] The DOJ offers no explanation for its changed position. Nor could it: Nothing in Section 271(c)(1)(A) requires that residential and business customers be served by the same competitor, and achievement of the Act's goal of opening the local exchange is demonstrated whether there is (1) a single competitor serving both residential and business customers, or (2) two competitors, one serving business customers and the other residential customers.

2. The principal Track A argument advanced by Ameritech's competitors is that Brooks, MFS, and TCG do not satisfy the "predominantly facilities based" prong of Section 271(c)(1)(A). E.g., AT&T, pp. 34-36; MCI, pp. 6-8; ALTS Mot., pp. 22-26.[3/] But this argument is baseless. Brooks, MFS and TCG each have purchased or constructed themselves local switching facilities, fiber optic networks, and thousands of loops and trunk lines over which they predominantly or exclusively provide local service. Ameritech Br., pp. 10-11. Indeed, these carriers regularly characterize themselves as facilities-based providers outside the

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[2/] DOJ SBC Evaluation, p. 13 n.18; see also id., pp. 9-10.

[3/] AT&T incorrectly maintains that Brooks, MFS, and TCG do not qualify as "competing" providers of local service because they "do not, either individually or collectively, offer a choice to more than a small fraction of Michigan customers." AT&T, p. 34. As an initial matter, the factual premise underlying AT&T's argument is false. Indeed, AT&T itself acknowledges (id.) that Brooks, TCG, and MFS together compete against Ameritech Michigan in the Detroit and Grand Rapids areas — Michigan's two most populous (and lucrative) local markets, each with far more than a "small fraction of Michigan customers." In any event, Section 271(c)(1)(A) does not require that a Track A carrier be a certain size, serve any particular number of customers, or cover a certain geographic area. See DOJ SBC Evaluation, Schwartz Aff., ¶ 19 ("Opening the market does not require evidence of local competition of all forms and in all regions of a State sufficient to substantially discipline BOC market power. The Act aims to let market forces determine what forms of entry work best and where"); H.R. Rep. No. 104-204, 104th Cong., 1st Sess. 77 ("The Committee expects the Commission to determine that a competitive alternative is operational and offering a competitive service somewhere in the State prior to granting a BOC's petition for entry into long distance") (emphasis added).

regulatory arena. Harris/Teece Aff., p. 51 App. A.[4/] Thus, no commenter undermines Ameritech's demonstration that Section 271(c)(1)(A) envisions only two possible methods of providing local service — resale and facilities-based service — and that all three carriers serve local customers either exclusively or predominantly via facilities-based service.[5/]

II. AMERITECH FULLY COMPLIES WITH THE COMPETITIVE CHECKLIST.

A. Ameritech Satisfies its Checklist Obligations by Furnishing or Making Available Each Checklist Item to Competing Carriers.

Section 271(c)(2)(B) requires that a BOC seeking entry under Track A provide each of the checklist items to competing carriers. Ameritech already demonstrated that a BOC may "provide" a given checklist item to competitors either by furnishing that item to carriers that have actually ordered it or by making available that item, through an approved interconnection agreement, to carriers that may elect to order it in the future. Ameritech Br., pp. 18-21. Ameritech's competitors argue at length, as they have in many other proceedings, that a BOC

4/ Moreover, the commenters' cramped interpretation of the "predominantly facilities-based" prong, together with their other statutory theories, would lead to absurd results that Congress could not possibly have intended. For example, under their theories, if a BOC faced a lone competitor that wins 90% of the BOC's local customers through use of the AT&T-proposed network element "platform," the BOC would not qualify for long distance for two independent reasons: the competitor would not qualify as a "predominantly facilities-based" carrier because UNEs are not the competitor's "own" facilities, and the BOC would not satisfy the checklist because it would not actually be "furnishing" resale to the competitor.

5/ Given the foregoing, we agree with the DOJ (p. 7, n.11) that there is no need to determine whether UNEs should be considered a CLEC's "own facilities" under Section 271(c)(1)(A). Still, we note that the commenters' attempts (e.g., Sprint, pp. 10-11) to distinguish ¶¶ 158-168 of the Universal Service Order — in which the Commission found, with the support of those very commenters, that the phrase "own facilities" in Section 214(e)(1)(A) includes the provision of service through unbundled network elements — are frivolous. MCI is particularly disingenuous. Indeed, although MCI here argues (p. 8 n.13) that CLECs do not have adequate "control" over UNEs to justify concluding that UNEs are a CLEC's "own" facilities under Track A, it has urged the opposite view in the Universal Service docket and other proceedings. See, e.g., testimony of Carl D. Geisy, I.C.C. Docket Nos. 96-0486/96-0569, pp. 6-7 (Mar. 7, 1997) (unbundled switching and owned switching are functionally equivalent — both provide CLEC with "capability to design its own services").

"provides" a checklist item only when it actually furnishes the item — even if no qualifying competitor has placed an order for it. E.g., MCI, pp. 10-14; CompTel, pp. 10-13; WorldCom, pp. 9-11. As the DOJ, the MPSC, and the Illinois Hearing Examiner have uniformly concluded, such a restrictive interpretation is meritless and directly contrary to Congress' intent.[6/] For the reasons given in Ameritech's initial brief, the Commission should reach the same conclusion.[7/]

B. Ameritech is Providing Each Item of the Competitive Checklist on Terms and Conditions and at Rates that Fully Satisfy the Act.

The MPSC and the DOJ agree that Ameritech has fully implemented and is providing most checklist items.[8/] The MPSC expresses concern about only three of the 14 checklist items

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6/ See DOJ, p. 11; MPSC 2/5/97, p. 34; Ill. 6/20 HEPO, p. 8.

7/ MCI and Sprint incorrectly claim that Ameritech may not rely on the MFN clauses in its interconnection agreements with Brooks, TCG, and MFS to demonstrate that it is "providing" checklist items to those carriers. MCI, pp. 8-10; Sprint, pp. 17-20. The record clearly demonstrates that CLECs may avail themselves of the terms and conditions in other agreements that relate to any particular method of interconnection, resale service or unbundled network element — regardless of whether the item is also included in their own agreements. See Edwards Aff., ¶¶ 14-17 & Sched. 3; Ameritech Michigan Submission in Response to TCG Detroit, MPSC Docket No. U-11104 (May 14, 1997); Edwards Reply Aff., ¶¶ 9-17. This fact is confirmed by the Illinois Hearing Examiner, who concluded that "[p]ursuant to [Ameritech's] MFN clauses, [requesting carriers] may order individual network elements or checklist items out of Ameritech's approved interconnection agreement with AT&T or any other approved agreement." Ill. 6/20 HEPO, p. 17 (emphasis added). Indeed, the best evidence that Ameritech's MFN clauses are effective is the fact that carriers have successfully invoked them: MFS did so in four states to adopt the UNE provisions included in the AT&T Agreement, while TCG has used its MFN clause to obtain the reciprocal compensation provisions of the Brooks Agreement. Edwards Reply Aff., ¶ 11. And, in any event, Section 252(i) of the 1996 Act creates MFN rights independent of Ameritech's contractual obligations.

8/ Likewise, the Ill. 6/20 HEPO cites as deficiencies local transport, local switching and resale. The latter two are based on a misunderstanding concerning customized OS/DA routing; Ameritech in fact provides precisely what the Hearing Examiner says it should. Edwards Aff., ¶¶ 126-131, and in particular ¶ 130; Kocher Reply Aff. ¶ 40. This means that, at bottom, the Ill. 6/20 HEPO should be read to find checklist compliance on 13 of the 14 items. With respect to the single remaining item, local transport, the Illinois Hearing Examiner finds that Ameritech falls short because it does not offer "common transport" as an element. The DOJ takes the same position. We show below why both are wrong. The MPSC also declines to find full compliance with the local transport item, not because it agrees with the Illinois 6/20 HEPO and the DOJ, but simply because the Commission has not yet ruled on the issue (i.e., whether local transport includes "common transport" as an element).

— finding full compliance with the balance. The MPSC raises questions concerning local transport, 911 and Ameritech's performance measures and reporting for its wholesale support systems, all of which it notes can be resolved within the time period for determination of Ameritech's Application.[9/] The DOJ concludes that Ameritech falls short on only four of the 14 items: interconnection, operations support systems ("OSS"), local transport and local switching. As we demonstrate below, even these few objections are ill-founded. In fact, as we show, Ameritech currently provides all fourteen checklist items.[10/]

1. **Operations Support Systems**.

Ameritech's application demonstrates (pp. 21-30) that Ameritech is providing requesting carriers with effective access to its OSS. Ameritech showed that (1) it provides carriers with

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[9/] The MPSC (pp. 41-44) and DOJ (p. 9 n.16) state that they cannot at this time determine whether Ameritech complies with item (vii)(I) of the checklist, 911 services. Their concerns arise from difficulties with the 911 database in Southfield. As the Jenkins Reply Affidavit explains (¶¶ 59-65), those problems — none of which left customers without 911 service — were quickly remedied, and a settlement of the City of Southfield's complaint is pending. Moreover, Ameritech has methodically reviewed its entire Michigan 911 database and instituted procedures to maintain accuracy and to perform its data entry and error correction role. Jenkins Reply Aff., ¶¶ 52-56, 66-70; Mayer Aff., ¶¶ 230-259. Indeed, the Michigan 911 database is 99.8% accurate (exceeding the industry's 99% standard), and 100% of mechanized orders are processed within one business day. Jenkins Reply Aff., ¶¶ 32, 53. This, combined with Ameritech's detailed procedures for 911 trunking (id., ¶¶ 40-42), demonstrates that Ameritech is providing nondiscriminatory access to 911 and E911 service.

[10/] A few competitors, primarily AT&T, have raised unfounded complaints about the manner in which Ameritech is providing access to poles, ducts, conduit and rights-of-way. Most of these complaints are simply rehashed arguments that have been rejected in proceedings before state commissions, including the MPSC and ICC. For a comprehensive response to these allegations, see Mayer Reply Affidavit. Ameritech's competitors also raise several claims arising out of their day-to-day business relationships with Ameritech. These various claims are responded to in affidavits by the appropriate Ameritech account manager or other employee: Kay Heltsley/Eric Larsen/Robert Hollis (Brooks); Eric Larsen(MFS); Paul Monti (TCG); Michael Murray (MCI); Michael O'Sullivan (LCI); H. Edward Wynn (Negotiations with CLECs); Timothy Jenkins (911); Terry Appenzeller (MCI/Industry Forums); and Suzanne Springsteen (Reciprocal Compensation). The issues addressed in these affidavits illustrate how Ameritech's competitors are attempting to obscure the purpose of this proceeding as established by the Act by turning it into an omnibus docket for the airing of whatever disputes they might have with Ameritech.

the necessary technical specifications to "build to" Ameritech's OSS interfaces, (2) its OSS interfaces are operational, as demonstrated by exhaustive internal testing, carrier-to-carrier testing, and commercial usage by carriers, and (3) its OSS have sufficient capacity to meet forecasted demand. Outside experts in information systems carefully reviewed this evidence and confirmed each of Ameritech's conclusions.

Not surprisingly, Ameritech's competitors seek to muddy the record with assertions that Ameritech's OSS are not operational because they do not operate to these competitors' complete satisfaction. Detailed responses to each assertion appear in the reply affidavits of Messrs. Gates and Thomas (computer audit and security experts from Arthur Andersen) and Mickens and Rogers. However, the ultimate rejoinder to the commenters' claims, and the ultimate confirmation of OSS availability, come from:

(1) the MPSC, which thoroughly weighs the "considerable" record on OSS, rejects the very arguments advanced by the commenters here, and concludes that "Ameritech has met the first test, technical or physical access to the processes which permit competitors to obtain elements or services necessary to provide CLEC service" (p. 33);

(2) the Illinois Hearing Examiner, whose 6/20 HEPO carefully reviews the same record and arguments before the MPSC and now before this Commission, and likewise finds (p. 53) that Ameritech's "OSS is currently available and can be ordered immediately. Each of the interfaces is available and operational"; and

(3) the competitors themselves, who continue to use Ameritech's purportedly "unavailable" OSS in ever-increasing volumes. For example, EDI ordering volumes have nearly quadrupled — from approximately 21,000 in the months of March and April 1997 to over 79,300 in the months of May and June. Ameritech received over 9,100 orders in the week of June 2, nearly 10,500 orders in the week of June 9, and almost 23,500 orders in the week of June 23. On June 26, 1997, Ameritech processed over 7,300 orders in a single day. See Gates/Thomas Reply Aff. ¶ 25 & Schedule 3; Rogers/ Mickens/Mayer Reply Aff., Schedule 3. AT&T itself has "ramped up" significantly its resale activity; on June 23 it informed Ameritech to expect to begin receiving shortly 6,000 to 8,000 orders per day. Rogers/Mickens/Mayer Reply Aff., ¶ 61.

Unlike the MPSC and the Illinois Hearing Examiner, Ameritech's competitors stubbornly refuse to acknowledge Ameritech's efforts to address OSS-related issues as they arise. Even more importantly, they ignore their own continually increasing use of Ameritech's OSS

interfaces, which belies any claim that access to Ameritech's OSS functions is unavailable. The DOJ at least recognizes Ameritech's "extensive efforts," (p. 23) and "clear [ ]... progress" (p. 22), but fails to properly analyze and evaluate the spurious allegations made by opponents of Ameritech's Application. The comments of Ameritech's competitors are simply a rehash of assertions presented to — and rejected by — the MPSC and the Illinois Hearing Examiner.

Predictably, Ameritech's competitors persist in their view that every interface must be in actual use for every product or service before being deemed available. The DOJ similarly (pp. 23, A-8) pronounces Ameritech's pre-ordering interface unavailable — even though three of the five pre-order activities are in commercial use, even though MFS has tested the remainder, and even though third party experts have reviewed and endorsed Ameritech's internal testing (which the DOJ (p. A-5) concedes to be "significant"). The sole basis for the DOJ's assertion (which runs directly counter to its endorsement of third-party experts in the SBC evaluation) is MFS' failure to disclose detailed results of its tests, even though Ameritech "requested feedback from MFS without response." DOJ, p. A-7. The DOJ's position is difficult to fathom. Plainly, the tests were successful: Otherwise, MFS' operations personnel would have informed their Ameritech counterparts, and its lawyers would have informed the Commission. The only beneficiaries of the DOJ's approach are MFS, which is rewarded for its suppression of information; AT&T, which has refused Ameritech's repeated requests to test and use the pre-ordering interface; and other competitors of Ameritech.[11/]

[11/] The DOJ makes the same fundamental error in assessing Ameritech's repair interface. No one could seriously contest the operational status of that interface, which the DOJ describes (p. A-21) as the "industry standard" and which has been used by interexchange carriers for over two years. The DOJ focuses instead on the "GUI." The DOJ states (p. A-22) that there has not been enough testing or use of the GUI — a separate personal computer-based application that Ameritech developed to enable CCT and other smaller carriers to obtain electronic access to Ameritech's repair and maintenance OSS without incurring the expense associated with building their own interfaces. Thus, Ameritech would be penalized by the DOJ for introducing an (continued...)

The MPSC (p. 20) and Ill. 6/20 HEPO (p. 53) rightly reject the "actual use only" approach, which would leave Ameritech at the mercy of its competitors' business plans and their tight-lipped testers. Instead, the controlling fact — which even the DOJ does not dispute (p. 22) — is that Ameritech has actively invited carriers to test and use its OSS, and has provided OSS access for such purposes wherever and whenever requested. The MPSC, the Illinois Hearing Examiner and independent systems experts have all thoroughly reviewed the testing and use data, and concluded that Ameritech's systems are operationally ready.

Of course, even across-the-board actual use would not satisfy Ameritech's competitors. As Ameritech predicted in its application, they want this Commission to require perfect, problem-free usage. TCG is the most candid in expressing this position (p. 12), declaring that "[t]he perfection of electronic interfaces is a necessary prerequisite" and that Ameritech's "electronic interfaces must be shown to be failure-proof." Other competitors, albeit more subtly, desire to have this Commission micro-manage OSS, and thus continue to trot out operational issues that Ameritech has already solved, as well as the same tired arguments that the MPSC and the Illinois Hearing Examiner have considered and rebuffed. For example:

Manual Capacity. No one seriously disputes Ameritech's thorough testing of electronic capacity, which the DOJ (p. A-22) describes as "robust." Instead, the commenters claim that Ameritech lacks the manpower to process orders. They focus much of their ire on Ameritech's order processing results for the week of April 28, 1997, during which Ameritech experienced a sudden "spike" in carrier demand without any forewarning from the responsible carrier, AT&T. See, e.g., DOJ pp. A-14 through A-16. Ameritech has since doubled its manual

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11/(...continued)
additional software tool beyond the industry standard. Moreover, Ameritech has successfully tested all four GUI functions with CCT (the only carrier willing to do so at the application date), and Ameritech's pay phone affiliate uses the GUI extensively and with a high rate of success. Gates/Thomas Reply Aff., ¶¶ 66-68.

resources in this area and has successfully processed orders at consistently higher weekly volumes. Gates/Thomas Reply Aff. ¶¶ 55, 63, 82; Rogers/Mickens/Mayer Reply Aff., ¶ 61, Schedule 4.[12/]

Order Processing Issues. Ameritech's competitors continue to chide Ameritech for rejecting carrier orders containing improper data; for manually processing certain orders for which full electronic flow-through would be impractical; and for certain errors that led to some temporary double billing incidents earlier in the year. Ameritech has identified the solutions it implemented to alleviate or eliminate these issues, which are the types of "issues" a system such as this normally would have, and the results show significant improvement even as demand has reached record levels. Gates/Thomas Reply Aff. ¶¶ 29, 42, 45, 70-75.[13/]

Provisioning Loops. The DOJ (pp. 23 & A-19, A-20) uncritically adopts Brooks' unsworn and unsubstantiated claim that Ameritech meets due dates in the 50-60% range rather

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[12/] Ameritech acknowledges that it had insufficient service representatives to accommodate dramatic and sudden "spikes" in resale order volume in late April, which resulted in excessive reassignment of due dates. Ameritech's performance in response to these "spikes" was relied on for litigation purposes by the very carrier that created the "spikes." Moreover, the Illinois Hearing Examiner has expressly found that Ameritech reasonably handled AT&T's 1000% increase in order volume. Ill. 6/20 HEPO at 51 ("The Commission is of the opinion that it is unreasonable to contend that a 1000% increase in orders will not cause any problems. We must hold Ameritech to a reasonable standard. This means that Ameritech must be able to handle reasonable fluctuations in demand. The record indicates that Ameritech can do so."). Ameritech has since doubled its service center personnel, and plans to increase its staff by several more times by the end of 1997. Rogers/Mickens/Mayer Reply Aff., ¶ 61.

[13/] Moreover, many of Ameritech's competitors' complaints are off-base. For example, Ameritech's order reject rate by itself says nothing about operational readiness, given that Ameritech cannot control the quality or accuracy of orders that its competitors submit. In addition, a low reject rate could actually reflect a deficiency in an interface, i.e., that the interface does not sufficiently screen order errors at the order input stage, which could lead to serious problems "downstream", such as orders completed incorrectly (and the resultant customer dissatisfaction). Ameritech's competitors and the DOJ also criticize Ameritech's processing times for reject notices and FOCs. As the MPSC and the Illinois Hearing Examiner properly concluded, those criticisms are unfounded. Indeed, the commenters not only ignore Ameritech's substantial improvement in those areas, they fail to show that Ameritech's alleged shortcomings are in any material way service-affecting.

than the 94-98% figure in Ameritech's records. Ameritech and Brooks jointly analyzed this claim, found that it lacks merit, and determined that Ameritech's 94-98% figure was right all along. Mickens Reply Aff. ¶¶ 58-61; Heltsley/Larson/Hollis Reply Aff., ¶¶ 31-36.

No complex electronic system is perfect. As the DOJ recognizes (pp. 22-23), the absence of problems would itself raise questions. Designing, managing, and evaluating communications between the electronic systems of competing businesses is an inherently complex task. If the Commission were to adopt the "error-free" standard espoused by certain commenters, Congress' goal of full competition in all markets will never be reached. Given that operational issues are inevitable, the dispositive fact is that Ameritech has been forthcoming about those issues, has developed and implemented solutions, and has established procedures to monitor and promptly resolve any such issues as they arise. See DOJ pp. 22-23; Gates/Thomas Reply Aff. ¶¶ 18-20. These efforts have borne fruit: Recently, for example, Ameritech's ordering interface processed over 23,000 CLEC orders — more than double the previous highest level — in *one week*. Gates/Thomas Reply Aff., ¶ 25. Such results speak louder than any outdated complaints made for litigation purposes by Ameritech's competitors.[14/]

2. Interconnection Performance — EOI Trunk Blockage.

Ameritech explained in its initial brief (p. 31) that it measures and reports, on a monthly basis, interconnection performance in terms of end office integration ("EOI") trunk provisioning, trunk blockage and trunk restoral. Repeating allegations made by several competitors, the DOJ opines that Ameritech's EOI trunk blockage performance falls short of the Act's non-discrimination obligations. DOJ, pp. 24-27 (citing TCG, pp. 4-8, and Brooks, pp. 28-29). This

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[14/] As the DOJ concedes (A-9 n. 13), "Ameritech provides the most convincing evidence — commercial use — that the [ordering] interface is functioning properly."

view is refuted by the findings of state regulators that scrutinized Ameritech's EOI performance.[15/] In addition, the DOJ and these carriers simply misanalyze the relevant EOI data and misread its significance. Moreover, new May EOI figures show that there was absolutely no out-of-parameter EOI trunk group blockage in Michigan. Rogers/Mickens/Mayer Reply Aff., ¶¶ 79, 81, 83, Attachment 6; Mickens Reply Aff., ¶¶ 76-77, Schedule 8.

The crux of DOJ's complaint is that "[d]uring March and April of 1997," 9.4% of the Ameritech's EOI interLATA trunk groups and 8.45% of Ameritech's EOI intraLATA and local trunk groups exceeded the 2% blocking threshold, compared to 1.5% of Ameritech's retail trunk groups. This analysis is flawed for the following reasons:

Regional vs. Michigan Data. The DOJ relied upon combined blockage data from all five Ameritech states, as opposed to using Michigan-specific data. The data shows that Ameritech's EOI blockage performance in Michigan was superior to that in the rest of the Ameritech region. Indeed, none of the out-of-parameter EOI interLATA trunk groups for March and April were located in Michigan; thus, the March/April EOI interLATA figure for Michigan was 0.0%, as opposed to 9.4% region-wide. (The Michigan figure for May continued to be

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[15/] The Illinois Hearing Examiner, for example, found that Ameritech provides interconnection in compliance with the checklist. Ill. 6/20 HEPO, pp. 20-24. The DOJ discounts this finding on the ground that "the Illinois HEPO provided no discussion of Ameritech's interconnection performance." DOJ, p. 25 n.33. In fact, the Hearing Examiner concluded (p. 23) that "Ameritech provides interconnection to requesting carriers at all points required for the transmission and routing of telephone exchange traffic, exchange access traffic, or both, in accordance with the applicable FCC Regulations[,] 47 C.F.R. 51.305" — after recognizing (p. 20) that those regulations require Ameritech to "provide interconnection to requesting carriers . . . equal in quality to itself" (emphasis added). Indeed, as it does now in this proceeding, TCG argued to the Hearing Examiner that the evidence proved that Ameritech's EOI trunk blockage performance failed to satisfy Ameritech's "equal in quality" obligations. See Initial Br. of TCG Inc. on Reopened Proceedings, Ill. C.C. No. 96-0404, pp. 7-8 (May 21, 1997) (Attachment 12 to Mickens/Rogers/Mayer Reply Aff.). After weeks of contested hearings and four rounds of briefs, the Hearing Examiner rejected this argument. Likewise, the MPSC found that Ameritech complies with the interconnection checklist item despite claims of network blockage by Brooks. MPSC, pp. 11-12.

0.0%.) Rogers/Mickens/Mayer Reply Aff., ¶¶ 78-81, 83; Mickens Reply Aff., ¶¶ 76-77, Schedule 8.

Improvement over Time. By combining data from March and April, the DOJ masked the improvement of Ameritech's EOI blockage performance over time. On a regionwide basis, the EOI intraLATA and local blockage figure improved from 10.7% to 6.2% from March to April; in Michigan, the figure improved from 7.9% to 4.5%. These dramatic improvements continued in May: The region-wide EOI intraLATA and local blockage figure dropped to 2.3%, while the Michigan blockage figure dropped to 0.0%. Thus, in May, there were no out-of-parameter EOI trunks in Michigan, exceeding Ameritech's May retail performance of 1.0%. Rogers/Mickens/Mayer Reply Aff., ¶¶ 78-81, 83; Mickens Reply Aff., ¶¶ 76-77, Schedule 8.

Other Significant Factors. The DOJ did not acknowledge that reported local and intraLATA EOI blockage does not necessarily result in actual call blockage due to network management re-routes that Ameritech institutes for these EOI trunks. Id., ¶ 82. All told, the blockage figures cited by DOJ translate into only a few calls out of every 10,000 being blocked. Finally, the DOJ improperly discounted the fact that actions, omissions and network architecture choices made by CLECs themselves, and TCG in particular, have in large measure created whatever EOI blockage problems existed in the past and continue in the present. Id., ¶¶ 84-89.

For these reasons, there is no legitimate basis for concern about Ameritech's EOI blockage performance in Michigan. A proper analysis of the data — particularly Ameritech Michigan's flawless performance in May — shows that Ameritech Michigan satisfies the parity standards for interconnection.[16/]

[16/] Messrs. Mayer and Monti refute various allegations raised by TCG (pp. 4-8; Pelletier Aff., ¶¶ 10-24) — some of which appear to have been accepted by the DOJ (pp. 26-27; Appendix A, pp. A31-A32) — in their affidavits. Monti Reply Aff. (passim); Mickens/Rogers/Mayer Reply Aff., ¶¶ 90-120.

3. Cost-Based Prices.

Ameritech demonstrated in its application that its prices for unbundled network elements, interconnection, local transport and termination, and resold services comply with Section 252(d) of the Act. The DOJ itself recognized that the prices set in the Michigan arbitrations and incorporated in Ameritech's interconnection agreements are "for the most part relatively low" and even more favorable (from the CLECs' perspective) than this Commission's stayed proxy prices. DOJ p. 41. However, Ameritech's competitors (and apparently the DOJ) express concern about the interim nature of Ameritech's prices. Those concerns are unfounded.

First, all the interim prices are cost-based. None exceeds (and many are lower than) the standard enunciated in Section 252(d) of the 1996 Act. See Palmer Reply Aff., ¶¶ 5-18, 23-30; Broadhurst Reply Aff., ¶¶ 5-53; Quick Reply Aff., ¶¶ 9-55; Aron Reply Aff., ¶¶ 8-105.[17/]

Second, the purported distinction between "permanent" and "interim" prices is meaningless. The prices that result from Michigan's "permanent" cost proceeding (U-11280) will remain subject to change in further proceedings of the MPSC, whether initiated by the

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[17/] The MPSC has taken a very firm approach in all its cost proceedings to ensure that prices are cost-based. For example, in its U-1155/56 proceeding, which established prices for basic loops and ports, interim number portability and local transport and termination, the MPSC denied Ameritech the ability to recover any joint, common, or one-time non-volume sensitive costs. See Palmer Reply Aff., ¶ 7. AT&T's and MCI's complaints about Ameritech's rates, and in particular its nonrecurring charges, are based on their gross mischaracterizations of the record. For example, MCI affiant Ricca asserts (¶ 8) that Ameritech imposes a non-recurring charge of more than $130 for the order processing and installation of each resold line. In fact, Ameritech's only non-recurring charge for such order processing and installation is $30. The remainder of Mr. Ricca's $130 applies only where the customer requests an extra jack, and this same charge applies to retail as well as wholesale orders. Palmer Reply Aff., ¶¶ 32-33. Similarly, MCI affiant Ankum claims that Ameritech's one-time charges for loop service order processing are too high — citing the figure $49.76 per order; in fact, Ameritech's proposed charge is only $14.70 per order, a fraction of what Ankum claims and also substantially less than the Southwestern Bell service order charge he holds up as the standard to which Ameritech should be held. And although Ankum complains that the demand forecast that Ameritech uses to allocate costs for billing development for unbundled switching is unrealistic, he ignores the fact that Ameritech's competitors have refused to respond to its request for forecasts. Id. at ¶¶ 23-27.

MPSC itself or requested by Ameritech or a CLEC. See Mich. Comp. Laws § 484.2203 (governing initiation of contested hearings). Thus, speculation about the temporal life of Ameritech's prices for UNEs (and other products and services) is beside the point. Ameritech's current prices unquestionably comply with the mandate of Section 252(d) that they be "based on the cost" of providing them. Moreover, the authorization to set interim rates came from this Commission (see Local Competition First Report and Order, ¶ 787), with no indication that the adoption of such interim rates would prejudice the Section 271 application process.[18/]

4. Performance Measurements.

While the DOJ finds (p. 40) that Ameritech's performance measures are generally adequate, it concludes that they are still deficient in a few respects. According to the DOJ, Ameritech's performance measures suffer from (1) unclear definitions with respect to loop provisioning and due date performance and (2) a failure to measure and report average installation intervals, comparative performance information for unbundled loops, and a handful of other items. These criticisms should be rejected.[19/]

First, none of these criticisms, which are more a matter of approach than substance, establish that Ameritech's comprehensive performance measures do not permit CLECs or other interested parties to confirm Ameritech's checklist compliance and detect any "backsliding" once

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[18/] The unsupported objections of Ameritech's competitors to various aspects of its cost studies, including fill factors, cost of capital, depreciation lives, shared and common cost allocation, and nonrecurring charges, are answered in the reply affidavits of Palmer, Broadhurst, Quick and Aron.

[19/] Many of Ameritech's competitors voice the same complaints as the DOJ regarding Ameritech's performance measures. For the reasons discussed herein and in Mr. Mickens' reply affidavit, these complaints are unfounded. Ameritech's competitors also register a number of complaints regarding Ameritech's actual performance. These complaints are responded to in detail in Mr. Mickens' reply affidavit. For present purposes, however, it is worth nothing that none of these competitors show that Ameritech's alleged performance shortcomings are service-affecting in any meaningful way. Nor could they, given their successful entry into and rapid growth in the local services marketplace.

Ameritech is permitted to enter long distance in-region. That is the relevant inquiry here. As Ameritech showed in its application, its performance measures and reports provide CLECs and others with a wealth of meaningful information — as opposed to information for information's sake — that enables these parties to perform any monitoring contemplated by the Act. In fact, Ameritech's performance measures and reporting obligations have been the subject of intense negotiations and debate in Section 252 arbitrations, and were found by the MPSC, which has substantial expertise regarding local telecommunications operations, as well as by other state commissions, to be "consistent with federal and state law" and "in the public interest." MPSC April 4 Order, p. 5; accord AT&T/Ameritech Arbitration Decision, Ill. C.C. No. 96 AB-003/004, pp. 11-14, 30-31, 37-38, 46-47.[20/]

Second, Ameritech has fully explained, both in its application and to requesting carriers, each of the performance measures that the DOJ complains is unclear. Rogers/Mickens/Mayer Reply Aff., ¶¶ 26-31. The DOJ's real complaint appears to be that Ameritech has not yet formally incorporated all of these explanations into the glossaries of its performance reports themselves. To alleviate this concern, which does not go to the quality of Ameritech's performance plan which has no effect on the ability of competitors to monitor Ameritech's performance, Ameritech will incorporate all such explanations into its glossaries.[21/]

[20/] The MPSC's conclusion that Ameritech's performance plan is somehow incomplete is contradicted by the record it created and the orders it issued in the arbitrations. The Illinois Hearing Examiner, for his part, finds that the arbitrations did their job and yielded a complete panoply of performance measures, standards and reporting requirements. Ill. 6/20 HEPO, p. 101. In any event, Ameritech shows how its performance plan puts to rest any lingering concerns of the MPSC in the reply affidavit of Warren Mickens (¶¶ 8-31).

[21/] For example, while Ameritech's current definition of "Service Due Dates" in its reports does not itself identify when Ameritech assigns due dates other than those requested, Ameritech will supplement that written definition to identify the limited situations provided for in its interconnection agreements for reassigning due dates. Moreover, to the extent that any requesting carrier believes that a certain measure should be further explained or clarified, Ameritech invites the carrier to request such an explanation or clarification.

Third, Ameritech's performance measures permit a meaningful comparison of Ameritech's retail performance with its wholesale performance wherever possible, so that requesting carriers can monitor whether Ameritech is complying with its contractual obligations. For example, Ameritech's practice of counting CLEC orders received after 3:00 p.m. as being received at the start of the next business day (similar to the posting practices of commercial banks) corresponds to Ameritech's internal cut-off time for retail orders. Measuring wholesale performance against the same baseline used for comparable retail functions assures parity between Ameritech's wholesale and retail performance. Rogers/Mickens/Mayer Reply Aff., ¶¶ 26-31. Other specific criticisms of Ameritech's performance measures are addressed below.

Average Installation Intervals. The DOJ notes (pp. A24-26) that Ameritech does not measure average installation intervals for resale. The DOJ's concern is misplaced. It is undisputed — by either the DOJ or any other party — that resale orders vary so greatly in complexity of function and process required for completion as to render meaningless any "average" interval of installation time. Rogers/Mickens/Mayer Reply Aff., ¶¶ 33-35. Some resale service orders require construction of facilities; others do not. Some resale service orders request complex features that may not be supported by the particular wire center; others do not. In addition, due date availability and assignment are based on a number of variables: the specific resale service being ordered; the condition and availability of facilities, equipment, central office technicians, field technicians; and the services available at the wire center that serve the subject line. Indeed, each of these factors itself varies among Ameritech's 1200 wire centers. Accordingly, the use of average installation intervals would not provide any meaningful information regarding checklist compliance. Id.

In contrast, Ameritech's performance measures do provide meaningful information on this front. The efficacy of those measures is driven home by the wealth of performance

information that Ameritech's competitors cite, albeit improperly, in opposing Ameritech's application. Indeed, nowhere does the DOJ or any other commenter show that Ameritech's performance measures are inadequate to determine whether requesting carriers are receiving parity of treatment for resale orders. Nor could they, given that Ameritech's approach is to monitor whether CLECs receive the same due dates, and the same provisioning performance in terms of due dates met, as Ameritech's retail operations. Ameritech also has committed to submit to any reasonable audit — including a real-time audit — of its due date assignments. Given that the DOJ is not "committed to a particular method of obtaining the required information when an adequate substitute is available" (p. A26), its minor objections to Ameritech's proposed audits should be rejected, and, in any event, certainly do not rise to the level of a serious obstacle to Ameritech's Application. Rogers/Mickens/Mayer Reply Aff., ¶¶ 36-39.[22/]

Comparative Information for Unbundled Elements. The DOJ asserts (p. A28) that "Ameritech's retail results for trouble report rate, receipt to restore, and out of service over 24 hours are included as comparable in its resale reports and there is no obvious reason why they could not similarly be reported on the unbundled loop reports." The premise of this assertion is wrong; Ameritech in fact already measures and reports unbundled loop performance for trouble report rate, receipt to restore, and out of service over 24 hours. Compare Mickens Aff., Sch. 18, Sec. 1, pg. 1 (Regional Loops) with Mickens Aff., Sch. 22, Sec. 1, pg. 1 (Regional Resale). Indeed, a comparison of the measurements requested by the DOJ shows that Ameritech's unbundled loop customers are receiving repair service that, on the whole, is better

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22/ Measuring average installation intervals for unbundled loops suffers from the same defects as measuring them for resale. Rogers/Mickens/Mayer Reply Aff., ¶¶ 40-42. Nonetheless, Ameritech will perform a special analysis of the frequency with which it assigns due dates other than those requested for unbundled loops, and the reason for those changes — as it did for Brooks Fiber in Mr. Mickens' initial affidavit. See id.; Mickens Aff., Schedule 29.